

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CHIRSTOPHER M.,

Claimant,

and

FRANK D. LANTERMAN REGIONAL
CENTER,

Respondent.

OAH Case Nos. 2005060521
2005080738

DECISION

These matters, consolidated for hearing, came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 17, 2006, in Los Angeles, California.

Claimant's mother represented Claimant.

Pat Huth, Attorney at Law, represented Frank D. Lanterman Regional Center (Regional Center or Service Agency).

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing. The record was left open for the submission of written closing argument. Service Agency submitted its closing brief on March 17, 2006, which document has been marked for identification as Service Agency Exhibit L. Claimant's mother submitted several versions and copies of her closing argument, the last of which, received March 20, 2006, was described as the "revised copy;" it has been marked for identification as Claimant's Exhibit DD. Both parties submitted reply closing argument on March 27, 2005, which documents have been marked as Exhibits M and EE, respectively.

On March 27, 2006, Claimant's mother submitted a document entitled "AAF Rose Bowl Aquatics Center, American Red Cross Learn-to-Swim Course Descriptions and Entry Level Requirements," which has been marked as Claimant's Exhibit FF. Although Claimant's Exhibit FF was not timely submitted, no objection was raised to its receipt and it is supportive and explanatory of other evidence received at the hearing. It is therefore received in evidence. The matter was submitted for decision on March 27, 2006.

ISSUES

1. Whether Service Agency should fund the aquatic therapy services provided by the Rose Bowl Aquatics Center (RBAC) (Case number L2005060521).
2. Whether Service Agency should fund the equestrian therapy services provided by Move a Child Higher, Inc. (MACH) (Case number L2005080738).

FACTUAL FINDINGS

1. Claimant is a six-year-old Service Agency consumer with a diagnosis of autism. He resides with his mother and younger sister in Pasadena, California.
2. Claimant presents some challenging behaviors, such as screaming, crying, physical aggression toward self and others, and non-compliance. He typically engages in these behaviors when unable to get what he wants or when unable to express his desires. Past behavioral interventions have met with limited success.
3. His social skills are limited. For instance, he tends to initiate interactions with other children by hitting and tickling them, and then running away.
4. He has limited exposure to the larger community because of the maladaptive behaviors, which are exacerbated by loud noises and crowds. He also tends to run off, even into traffic, if not held. Claimant is very active and likes to run and jump. Claimant jumps into the water in a small pool in his grandparents' house and holds his breath underwater for prolonged periods.
5. Since September 2005, he has been attending a special day class at the Bridgeport School, a placement funded by the Pasadena Unified School District (District). The District provides the services of a 1:1 aide, speech therapy, and occupational therapy. Through the Individualized Education Plan process, the District is developing a behavior intervention plan to address the disruptive behaviors.
6. Claimant's most recent Individualized Program Plan (IPP) resulted from a meeting on October 12, 2005. Four desired outcomes are listed under the category of "Living": continue living at home in a low stress environment; reduction of maladaptive behaviors; continue to strive toward increased independence; and creation by his mother of a safe place at home to de-escalate when upset. In order to help achieve the foregoing outcomes, Regional Center recommended participation by Claimant's mother in behavior modification training and in support groups, agreed to refer Claimant to a behavior intervention and treatment team, agreed to provide 16 hours per month of respite, and agreed to fund a 1:1 aide in Claimant's after school program for five hours per week.

The two desired outcomes in the “Social/Recreation” section of the IPP are improvement of social skills and learning to initiate interactions with peers. The document notes that Service Agency has agreed to fund two hours of music therapy per week to achieve these outcomes. The IPP further notes that Claimant’s mother would like to explore use of aquatic and equestrian therapy to meet these outcomes, but that the matter is in the fair hearing process.

7. Concerned for the safety of Claimant, his mother requested funding for swimming lessons in early June 2005. The request was formally denied on July 28, 2005. In Service Agency’s opinion, the swimming lessons offered by RBAC constitute a social recreational activity, not therapy, and such activity is the responsibility of the child’s parents, whether the child has disabilities or not. Regional Center noted that appropriate therapies were available to address behavior and safety issues and that less expensive classes were offered by the City of Pasadena’s Parks and Recreation Department. Despite the denial, Claimant’s mother has placed him in classes with five or six other children at the RBAC.

8. The RBAC program teaches children to swim. It provides private and semi-private lessons. Its brochure indicates that some of its instructors are trained to work with children with special needs, including behavior challenges. Claimant’s mother seeks funding for private lessons, which cost \$35 for a half-hour lesson. Semi-private lessons cost \$20 for each half-hour session.

9. One of the instructors with RBAC, Kathryn Mulvihill (Mulvihill), wrote a letter in support of Claimant’s request. She notes that Claimant needs extra supervision to ensure his safety and cooperation. He enjoys the water and has the natural ability to hold his breath under water.

10. Jill Brody (Brody), M.A., OTR, a consultant with Service Agency noted that aquatic programs could be “therapeutic” for Claimant as a recreation activity, but that the lessons provided by RBAC did not actually constitute therapy. Similarly, in a note made part of Claimant’s records, Leslie Richard, M.D., opined that the RBAC program could not be considered “therapy” because it involved “basic swim lessons,” not a specific therapeutic modality provided by a clinician trained in the use of aquatic therapy techniques.

11. On July 20, 2005, Claimant’s mother requested equestrian therapy, after Claimant went to the Griffith Park pony rides on a recent class field trip. His teacher reported that Claimant enjoyed riding the horse and the activity had a calming effect on him. Service Agency denied the request and communicated its decision in a letter dated July 25, 2005. It concluded that equestrian therapy was a social recreational activity, not therapy, and that parents were typically responsible for providing such services to their children.

12. Claimant's mother seeks funding for the program offered by MACH. MACH incorporates mounted games, exercises, drills, and other fun activities to help children develop balance, motor skills, learning skills and confidence. The program is not supervised by an occupational therapist, although on occasion occupational therapy students work with clients.

13. John Rittenhouse (Rittenhouse), MACH's Executive Director, evaluated Claimant on October 27, 2005. He observed Claimant interact with the horse and perform a number of tasks. In his opinion, Claimant interacted well with the horse and the volunteers providing assistance. The activities had a calming effect on the child and he was able to focus on the activities. Rittenhouse noted that a potential goal of the program would be to improve Claimant's balance in relationship to his location in space, a goal that he would propose to achieve with various occupational therapy games involving a horse.

14. The parties presented competing literature regarding the legitimacy of aquatic and equestrian therapy. Regardless of the general merits of these approaches, the inquiry must focus on Claimant's needs and the particular program under review.

15. In this case, the RBAC did not present specific goals designed to address Claimant's disability or therapeutic techniques to achieve those goals. Rittenhouse did indicate a potential goal, but did not state the specific techniques to attain the goal or describe the planned "occupational therapy games." Moreover, no assessment, professional opinion, or program design was provided to indicate the manner in which the therapies at issue might address Claimant's disability.

16. Equestrian therapy may indeed help Claimant improve his balance in relationship to his location in space, as Rittenhouse believes. In this regard, however, a proper assessment is needed, including an evaluation of potential benefits and analysis of whether this goal can be achieved through existing programs.

17. Claimant's mother believes the programs will generally help Claimant because they calm him and help him focus. However, the underlying behavior problems have not been satisfactorily addressed. The District and Regional Center are in the process of providing behavioral management services and training, which avenues should be fully explored before evaluating whether aquatic or equestrian therapy should serve as a substitute or an adjunct to these efforts.

18. Claimant's mother would like to explore the benefits of aquatic and equestrian therapies as social skills development activities. But private lessons and one-on-one riding instruction do not appear to be group-oriented activities that encourage peer interaction. Service Agency has agreed to fund music therapy and this activity should be given the opportunity to provide the desired benefits.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code¹ section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Section 4501.)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Section 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Sections 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities” as follows:

“Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option”

Services and supports can include social skills training and recreation. (Section 4512, subd. (b).)

4. Thus, section 4512, subdivision (b), requires regional centers to provide “specialized services and supports or special adaptations of generic services,” taking into account consumer needs and desires as well as cost-effectiveness.

5. The RBAC program is not a “specialized service” under section 4512, subdivision (b). Rather, it is the same program offered to children without disabilities. While instructors may have been trained to work with children with disabilities, this fact, without more, is insufficient to constitute a “special adaptation of a generic service,” as the program content appears to be the same regardless of the child involved. Even if private lessons, taught by a

¹ All further references are to the Welfare and Institutions Code.

specially-trained instructor, are deemed such special adaptation, no assessment or clinical opinion has been presented from which to conclude that the RBAC program constitutes a cost-effective method to meet Claimant's individual needs. Moreover, the activity's efficacy in achieving the desired social interaction goal has not been established and another opportunity intended to meet this goal, music therapy, has been approved. Accordingly, the RBAC program has not been shown to constitute an appropriate service or support for Claimant, by reason of factual finding numbers 1 through 10 and 14 through 18, and legal conclusion numbers 1 through 4.

6. The MACH program is not a "specialized service" under section 4512, subdivision (b). Rather, it is the same program offered to children without disabilities. While instructors may have been trained to work with children with disabilities, this fact, without more, is insufficient to constitute a "special adaptation of a generic service," as the program content appears to be the same regardless of the child involved. Even if private lessons, taught by a specially-trained instructor, are deemed such special adaptation, no assessment or clinical opinion has been presented from which to conclude that the MACH program constitutes a cost-effective method to meet Claimant's individual needs. Moreover, the activity's efficacy in achieving the desired social interaction goal has not been established and another opportunity intended to meet this goal, music therapy, has been approved. Accordingly, the MACH program has not been shown to constitute an appropriate service or support for Claimant, by reason of factual finding numbers 1 through 6 and 11 through 18, and legal conclusion numbers 1 through 4.

7. Service Agency need not fund the RBAC or the MACH programs, by reason of factual finding numbers 1 through 18 and legal conclusion numbers 1 through 6.

ORDER

Claimant's appeal is denied.

Dated: _____

Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.